REMARKS

The following comments are responsive to the Office Action mailed April 23, 2009 ("Action"). Reconsideration and allowance of the claims are requested based on the above amendments and the below remarks.

Claim Objections

The Action requests identification of the support for "a resource utilization" and "a resource utilization parameter above a threshold level" recited in claim 1. Applicants submit that these features are supported by at least page 10, lines 8-16; page 9, line 20 to page 10, line 7; and page 12, lines 12-22 of the specification originally filed on February 27, 2004. PAIR includes a copy of a different specification as well (dated May 28, 2004), but that specification is for a different application[1].

Further, Applicants submit that although the Action gives examples of "resource utilization" and "resource utilization parameter" at the bottom of page 2, those examples are not exhaustive, as the claim terms should be given their broadest reasonable scope, and not be limited to the examples given.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 3, 6, 7, 10-13, 33, 35, and 37-42 stand rejected under 35 U.S.C. § 103(a) over Holzle (US Patent No. 6,240,548) in view of Beadle (US Patent No. 6,530,075). Claims 34 and 43 stand rejected under 35 U.S.C. § 103(a) over Holzle and Beadle, in further view of Cierniak (US Patent No. 7,103,723). Claims 5 and 36 stand rejected under 35 U.S.C. § 103(a) over Holzle and Beadle, in further view of Inamdar (US PGPUB No. 2003/0149960). Applicants respectfully traverse for at least the following reasons.

A.   Comments on Claims 1 and 35

The combination of Holzle and Beadle, even if proper, fails to teach or suggest "communicating the p-code file via a network to a target environment for execution of the compiled code and interpretation of uncompiled instructions in the p-code file" as recited in

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[1] The undersigned is uncertain as to why this different specification appears in the PAIR records.

amended claim 1. Some of these features were previously recited in claim 33, now cancelled. To reject claim 33, the Action cites Holzle at Figure 6; column 11, line 26-column 12, line 12; column 7, line 23 to column 8, line 39; and column 2, line 23 to column 3, line 8. *See* Action, p. 5-6.

Holzle does not disclose communicating a p-code file via a network to a target environment in the manner claimed. Holzle describes a virtual machine 640 that compiles and interprets byte codes <u>within</u> the runtime environment 635 of a computer system 530, but does not disclose virtual machine 640 or computer system 530 communicating a p-code file via a network to a target environment for execution of compiled code and interpretation of uncompiled instructions. Figure 6, reproduced, provides "a diagrammatic representation of a virtual machine." *See* Holzle, C3, L37-38.
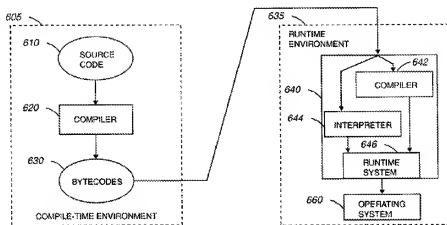

Figure 6

As explained in Holzle, "Byte codes 630 are provided to a runtime environment 635 which includes virtual machine 640. . . [that] includes a compiler 642, an interpreter 644, and a runtime system 646." *Id.* at C11, L49-55. Holzle indicates that "Interpreter 644 . . . performs the operation defined by each byte code as each byte code is read into interpreter 644 . . . [and] performs operations associated with byte codes 630 substantially continuously." *Id.* at C11, L61-65. Holzle discloses that if "it is determined that the method is to be invoked as a compiled method, runtime system 646 activates compiler 642 . . . [that] generates machine instructions from byte codes 630, and executes the machine-language instructions." *Id.* at C12, L3-6. Thus,

the runtime environment 635 receives byte codes 630 that will either be compiled by the compiler 642 or interpreted by the interpreter 644. Thus, even if it could be argued that the runtime environment 635 includes the interpreted and compiled byte codes in a "file," Holzle does not disclose virtual machine 640 communicating any such file via a network to a target environment for execution of the compiled code and interpretation of uncompiled instructions – instead it simply executes those instructions.

Moreover, after Holzle executes the instructions, it <u>discards</u> them, so there is definitely no teaching in Holzle for communicating them in a p-code file via a network, as recited. Holzle indicates that in "general, the machine-language instructions **are discarded** when virtual machine 640 terminates" (*id*. at C12, L7-8; emphasis added); and hence virtual machine 640 is not communicating a file including the machine-language instructions to a target environment. As such, Holzle does not disclose "communicating the p-code file via a network to a target environment for execution of the compiled code and interpretation of uncompiled instructions in the p-code file" as recited in amended claim 1. The other citations to Holzle do not appear to be relevant to the claimed communication.

Beadle, which was only cited for other claim features, does not remedy this deficiency. Beadle describes a system that monitors the number of times a method is run to determine whether to perform just in time compiling. *See* Beadle, Fig. 4 illustrating an interpreter 404 and a just in time (JIT) compiler 410; and at C9, L1-39. If a method is run more than a threshold number of times, Beadles discloses enabling "just in time compiling of the method at the code level." *Id*. at C9, L34-36. Thus, Beadle describes determining whether to just in time compile a method, but does not teach or suggest "communicating the p-code file via a network to a target environment for execution of the compiled code and interpretation of uncompiled instructions in the p-code file" as recited in amended claim 1.

Accordingly, the combination of Holzle and Beadle, even if proper, fails to teach or suggest all of the features of amended claim 1 and hence does not support a *prima facie* case of obviousness. Moreover, the Action's conclusory statement of "optimiz[ing] running of bytecode as suggested by Beadle" (*see* Action, p. 4) does not provide any clear articulation of the reasons why the claimed invention would have been obvious. Therefore, Applicants submit that claim 1 defines over the cited references and respectfully request that the rejection under 35 U.S.C. § 103

be withdrawn.

Claim 35 recites features analogous to those recited in claim 1 and is allowable for at least similar reasons.

B.   Comments on Claims 10 and 39

The combination of Holzle and Beadle, even if proper, fails to teach or suggest "selectively setting each of a plurality of normally unused bits within a method access flag field of an identified class file, wherein said unused bits are selectively set to define thereby said priority level hint of a respective annotated method" as recited in claim 10. To reject claim 10, the Action cites Holzle at column 6, line 21-column 9, line 36. *See* Action, p. 5. This lengthy citation to Holzle does not support the rejection, as it fails to provide any discussion of at least "selectively setting each of a plurality of normally unused bits within a method access flag field of an identified class file." The Action does not allege that the other cited references discloses the claimed selectively setting in the rejection of claim 10, and hence has implicitly conceded that they do not. Accordingly, the combination of cited references, even if proper, fails to teach or suggest all of the features of claim 10 and hence does not support a *prima facie* case of obviousness. Therefore, Applicants submit that the rejection of claim 10 is improper and respectfully request that the rejection under 35 U.S.C. § 103 be withdrawn.

Claim 39 recites features analogous to those recited in claim 10 and is allowable for at least similar reasons.

C.   The Remaining Pending Claims

The claims not addressed above that respectively depend from claims 1 and 35 are allowable due to their dependence on an allowable claim, in addition to the features they recite.

D.   New Claims

New claims 44-48 have been added to the application. Claim 44 recites communicating a "p-code file via a network to a target environment for execution of the compiled code and interpretation of uncompiled instructions in the p-code file," and the combination of Holzle and Beadle fail to disclose this feature for the same reasons as discussed above in claim 1. Claims

45-48 are allowable due to their dependence on an allowable claim, in addition to the features they recite.

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CONCLUSION

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Applicants respectfully submit that the pending claims are in condition for allowance. Favorable reconsideration of this application is respectfully requested. The Examiner is invited to contact the undersigned should it be deemed necessary to facilitate prosecution of the application.

Respectfully submitted,

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